

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33047

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 437
	)	
Plaintiff-Respondent,	)	Filed: April 27, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
TODD E. SHOEMAKER,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Steven C. Verby, District Judge.

Judgment of conviction for trafficking in marijuana, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant. Elizabeth A. Allred argued.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent. Rebekah A. Cudé argued.

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GUTIERREZ, Judge

Todd E. Shoemaker appeals from his judgment of conviction for trafficking in marijuana. Specifically, he contends the district court erred in denying his motion to suppress evidence. We affirm.

I.

BACKGROUND

On January 31, 2005, Detective Kit Sanger with the Sundance Drug Task Force was called to a traffic stop due to the discovery of a mobile methamphetamine lab in the trunk of the stopped vehicle. The three passengers, Wendy Woods, Joel Diekhoff, and Joshua Florence, were questioned regarding their recent activities. Florence and Diekhoff had departed from Coeur d'Alene in the early morning hours of January 30 to drive to Sandpoint in order to obtain marijuana. Diekhoff directed Florence to a residence "in the woods on a mountain," where they met Woods. It was not Woods' home, but rather the cabin of a friend who was letting her stay

there. During the course of the evening, the three consumed methamphetamine together. None of the three described the location of the cabin, although Woods referred to it being in the Priest River area. Woods did not give the name of her friend or a home address.

While searching the trunk of the car, officers opened a black bag belonging to Woods which contained several photographs of Shoemaker. Detective Sanger recognized Shoemaker from previous involvement with him. Detective Sanger also developed the film from two disposable cameras found in the trunk of the car, one of which was in Woods' bag. The photographs, fewer than a dozen altogether, were taken inside two different residences, as indicated by the different walls in the backgrounds of the pictures. One residence had finished walls, while the other appeared to be a log cabin. One photograph depicted both Diekhoff and Florence, and appeared to be recent. Florence's facial hair appeared to be the same length in the photos as it was at the time of his arrest, and Diekhoff had a bandaged hand at the time of arrest and the hand was visible in the photo. Woods' black bag was also depicted in at least one of the photographs. There was also a photograph of a man Detective Sanger determined to be Shoemaker, although the man's face is obscured by his arm. Detective Sanger recognized Shoemaker from his physique, hair and glasses. A methamphetamine lab is visible in the background behind this man.

Detective Sanger sought and obtained a warrant to search Shoemaker's property in LaCleda, including his home and all outbuildings, for evidence of controlled substances, specifically methamphetamine and marijuana, paraphernalia associated with the use or manufacture of controlled substances, proof of identity, residency or occupancy, as well as ledgers, currency, firearms and photographs.<sup>1</sup> Detective Sanger provided Shoemaker's address and a description of how to reach the property after another detective confirmed that Shoemaker's vehicle was parked out front. Upon executing the search warrant, Shoemaker was arrested for possession of a controlled substance, methamphetamine, Idaho Code § 37-2732(c)(1), and trafficking in marijuana, I.C. § 37-2732B(a)(1)(A). Shoemaker had a small amount of methamphetamine on his person, a similar small amount in his bedroom, and over two

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<sup>1</sup> Apparently the application for search warrant occurred hours later, after Woods, Diekhoff and Florence had appeared before a magistrate, after film from the disposable cameras had been developed, and after a site visit was made to Shoemaker's residence by another detective.

pounds of marijuana in the house. Shoemaker filed a motion to suppress the evidence seized from his house, asserting that there was no probable cause to support issuance of the warrant in the first place. The district court denied his motion, and Shoemaker was found guilty of trafficking in marijuana following a jury trial.<sup>2</sup> This appeal followed.

## **II.**

### **STANDARD OF REVIEW**

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999). This Court looks only at the evidence before the district court at the time of the motion to suppress, and not at evidence subsequently adduced at trial. *State v. Lafferty*, 139 Idaho 336, 339, 79 P.3d 157, 160 (Ct. App. 2003); *State v. Whiteley*, 124 Idaho 261, 266, 858 P.2d 800, 805 (Ct. App. 1993).

## **III.**

### **DISCUSSION**

Shoemaker asserts that the district court erred by denying his motion to suppress the evidence seized in his home pursuant to the search warrant. He argues that there was no probable cause to support issuance of the search warrant for his home because there was no evidence connecting the criminal activity discovered during the vehicle stop with his home. Therefore, he contends, the search violated both the Fourth Amendment of the United States Constitution and Article I, Section 17 of the Idaho Constitution.<sup>3</sup>

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<sup>2</sup> The state moved to dismiss the charge of possession of methamphetamine. It is unclear why this charge was not pursued.

<sup>3</sup> Although Shoemaker contends that both constitutions were violated, he provides no cogent reason why Article I, Section 17 of the Idaho Constitution should be applied differently than the Fourth Amendment to the United States Constitution in this case. Therefore, the Court

The Fourth Amendment and Article I, Section 17 prohibit unreasonable searches and seizures. Their purpose is to impose a standard of reasonableness upon the exercise of discretion by government agents and thereby safeguard the individual's privacy and security against arbitrary invasions. *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979); *State v. Maddox*, 137 Idaho 821, 824, 54 P.3d 464, 467 (Ct. App. 2002). When a search is conducted pursuant to a warrant, the burden of proof is on the defendant to show that the search was invalid. *State v. O'Keefe*, 143 Idaho 278, 287, 141 P.3d 1147, 1156 (Ct. App. 2006); *State v. Kelly*, 106 Idaho 268, 275, 678 P.2d 60, 67 (Ct. App. 1984). For a search warrant to be valid, it must be supported by probable cause. *State v. Molina*, 125 Idaho 637, 639, 873 P.2d 891, 893 (Ct. App. 1993). A search conducted pursuant to a warrant which is invalid for lack of probable cause is unlawful, and all evidence seized as a result of such a search must be suppressed. *State v. Johnson*, 110 Idaho 516, 528, 716 P.2d 1288, 1300 (1986). In *Illinois v. Gates*, 462 U.S. 213 (1983), the Supreme Court established a "totality of the circumstances" test for determining whether probable cause exists to issue a search warrant. *Molina*, 125 Idaho at 639, 873 P.2d at 893. Under this test, which was adopted by Idaho's Supreme Court in *State v. Lang*, 105 Idaho 683, 684, 672 P.2d 561, 562 (1983),

[t]he task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

*Gates*, 462 U.S. at 238; *see also O'Keefe*, 143 Idaho at 287, 141 P.3d at 1156; *Molina*, 125 Idaho at 639, 873 P.2d at 893.

In dealing with probable cause, the Court is concerned with probabilities. *Brinegar v. United States*, 338 U.S. 160, 175 (1949); *see also State v. Carlson*, 134 Idaho 471, 478, 4 P.3d 1122, 1129 (Ct. App. 2000). "These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men [and women], not legal technicians, act." *Brinegar*, 338 U.S. at 175. Probable cause is a fluid concept, "turning on the assessment of probabilities in particular factual contexts." *Gates*, 462 U.S. at 232. When

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will rely on judicial interpretation of the Fourth Amendment in its analysis of Shoemaker's claim. *See State v. Schaffer*, 133 Idaho 126, 130, 982 P.2d 961, 965 (Ct. App. 1999).

probable cause to issue a search warrant is challenged on appeal, the reviewing court's function is to ensure that the magistrate had a substantial basis for concluding that probable cause existed based on the information in the warrant affidavit and the recorded testimony in support of the warrant application. *Id.* at 239; *State v. Josephson*, 123 Idaho 790, 792, 852 P.2d 1387, 1389 (1993); *Lang*, 105 Idaho at 684, 672 P.2d at 562; *O'Keefe*, 143 Idaho at 286, 141 P.3d at 1155; *State v. Stevens*, 139 Idaho 670, 673, 84 P.3d 1038, 1041 (Ct. App. 2004). In this evaluation, great deference is paid to the magistrate's determination. *Gates*, 462 U.S. at 236; *State v. Wilson*, 130 Idaho 213, 215, 938 P.2d 1251, 1253 (Ct. App. 1997). The magistrate is allowed to draw reasonable inferences from the evidence presented, including inferences about where evidence is likely to be kept based on the nature of the evidence and the type of offense. *Gates*, 462 U.S. at 240; *see also O'Keefe*, 143 Idaho at 287, 141 P.3d at 1156; *Wilson*, 130 Idaho at 216, 938 P.2d at 1254; *Molina*, 125 Idaho at 642, 873 P.2d at 896. Moreover, the magistrate may take into account the experience and expertise of the officer conducting the search in making a probable cause determination. *United States v. Terry*, 911 F.2d 272, 275 (9th Cir. 1990); *O'Keefe*, 143 Idaho at 287, 141 P.3d at 1156; *State v. Wilson*, 120 Idaho 643, 647, 818 P.2d 347, 351 (Ct. App. 1991).

Detective Sanger testified before the magistrate that Florence and Diekhoff drove to Sandpoint in order to purchase drugs. Diekhoff directed Florence to a cabin in the woods on a mountain where they met Woods. This cabin was behind the residence of Woods' friend in the Priest River area. Woods informed Detective Sanger that her permanent residence was in another town with her mother, but she was staying with her friend for a while. None of the three described the location of the cabin with any further details, provided an address, or named the friend with whom Woods had been staying. Detective Sanger felt Woods was intentionally being evasive and providing vague answers in order to protect the identity of her friend. Inside the trunk of the car with the methamphetamine lab was a black bag belonging to Woods which contained photographs and a disposable camera; there was a second disposable camera loose in the trunk. Shoemaker was depicted in at least four of the already-developed photographs in Woods' bag. One of the pictures from the film developed by Detective Sanger depicted Florence and Diekhoff together. Detective Sanger testified that Florence's facial hair appeared to be the same length in the photograph and in his booking picture, and Diekhoff had an injured hand with a bandage in the photo, and also at the time of his arrest. Woods' black bag also appeared in one

of these photographs. This led Detective Sanger to conclude that the photographs were very recent, most likely from the night before the arrest. Since Woods was not pictured in the photos, she was likely the photographer.

Detective Sanger further testified regarding an additional photograph depicting a man without his shirt on, taken from the side, blocking his face from the camera with his arm. Detective Sanger recognized the man as Shoemaker based on his physique, hair color, hair cut, skin color and glasses.<sup>4</sup> Through his duties on the drug task force, Detective Sanger had had previous contact with Shoemaker and was familiar with him. In the background of the photograph of Shoemaker, Detective Sanger identified multiple items of paraphernalia associated with cooking methamphetamine, including Mason jars, a triple beam scale, and Coleman fuel with the funnel still in the top of the canister. Detective Sanger related to the magistrate Shoemaker's criminal history, which includes a conviction for possession of methamphetamine in 1998, a charge for possession of marijuana in 2003, and a charge for frequenting in 2003. Shoemaker was also associated with a marijuana growing operation in 2004, although no charges were filed. Finally, in October of 2004, Shoemaker was a passenger in Woods' car when she was arrested for possession of methamphetamine. Based on all of these facts, Detective Sanger believed that Shoemaker was still using drugs, making drugs available to others, and likely involved in manufacturing methamphetamine. At the time, Shoemaker lived in LaCleda, and there was a shed or shack behind his main residence. Detective Sanger was familiar with the location of Shoemaker's home and directed another officer to the location. Attached to the roof of the shed was a satellite dish, possibly indicating that it was being used as a residence, although Detective Sanger admitted that the dish could be feeding the main residence. Another detective confirmed that Shoemaker's van was parked in the driveway of the home, which was located on the road listed in the law enforcement database for Shoemaker's residence. Woods had also informed Detective Sanger that the cabin she was staying in did not have any running water, which was consistent with the type of shed behind Shoemaker's house.

"[M]ere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search" a person or his home, *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979), but Detective Sanger's experience and the magistrate's reasonable inferences

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<sup>4</sup> Shoemaker does not dispute that he is the man in the picture.

cannot be ignored, *see Wilson*, 120 Idaho at 646-47, 818 P.2d at 350-51. Shoemaker and Woods knew each other and were more than passing acquaintances, as was established by the photographs and the fact that just three months prior, they were traveling together before being stopped by law enforcement. Because so few pictures had been taken with either disposable camera, it was reasonable to infer that the pictures were taken the night before the arrest or in very close proximity thereto. Included in that series of photographs was the partially obscured picture of Shoemaker in front of a methamphetamine lab. Shoemaker had a history of involvement with drugs, including a recent marijuana growing operation. Detective Sanger was independently familiar with Shoemaker and directed another officer to his home which had a structure behind it, whether called a shed or a cabin, consistent with Woods' and Florence's descriptions. It was reasonable to infer that Woods was staying with Shoemaker, who lived in the Priest River area. The investigation of Woods, Diekhoff, and Florence, provided evidence indicating that Shoemaker most likely was the friend with whom Woods was staying, and where the group had consumed methamphetamine the prior evening. Taken together with all reasonable inferences, the evidence presented provides a substantial basis for concluding that the items sought were probably located in Shoemaker's home. *See State v. Sholes*, 120 Idaho 639, 642, 818 P.2d 343, 346 (Ct. App. 1991) (requiring "some *additional facts* which would support the inference that the items are *probably* located" in the suspect's residence, but not definite proof); *see also United States v. Fannin*, 817 F.2d 1379 (9th Cir. 1987); *United States v. Angulo-Lopez*, 791 F.2d 1394 (9th Cir. 1986). The magistrate's determination of probable cause was supported by substantial evidence and the search warrant was therefore validly issued.

#### IV.

#### CONCLUSION

The magistrate correctly determined that probable cause existed to support issuance of the search warrant for Shoemaker's home and property. Therefore the district court did not err by denying Shoemaker's motion to suppress the evidence discovered during the ensuing search. Accordingly, Shoemaker's judgment of conviction for trafficking in marijuana is affirmed.

Chief Judge LANSING and Judge GRATTON **CONCUR**.